

Appeals to the Secretary of Commerce Under the Coastal Zone Management Act (CZMA) – July 30, 2004

CZMA section 307, the federal consistency provision, requires proposed federal actions with reasonably foreseeable effects on any coastal use or resource to be consistent with the enforceable policies of federally approved State Coastal Management Programs (CMPs). CZMA sections 307(c)(3) and (d) require non-federal applicants for federal authorizations and federal financial assistance to State agencies and local governments, that have coastal effects, to certify to State CMPs that the proposed activities are consistent. If the State CZMA agency objects to the certification, the non-federal applicant may appeal the State's objection to the Secretary of Commerce. The Secretary will override the State's objection if the Secretary finds that the activity is consistent with the objectives of the CZMA or is necessary in the interests of national security. If the Secretary overrides the State's objection, then the Federal permitting/funding agency may issue its approval or funding. If the Secretary does not override the State's objection, the Federal agency cannot issue its approval or funding. The Secretary's decision is based on the administrative record compiled for the appeal from information submitted by the parties, other Federal agencies and the public. The regulations describing the Secretarial Appeal process and decision-making criteria can be found at 15 CFR part 930, subpart H (sections 930.120-131).

There are 34 federally approved State CMPs. Since approval of the first State CMP in the late 1970's, thousands of Federal agency activities, federal license or permit activities, outer continental shelf (OCS) oil and gas activities, and federal financial assistance activities have been reviewed for consistency with State CMPs. States have concurred with approximately 95 percent of all federal actions reviewed, and there have been only 40 Secretarial appeal decisions. This document lists those Secretarial decisions, breaks out the OCS oil and gas decisions, lists appeals dismissed and State objections overridden by either the Secretary or NOAA Administrator on procedural grounds, lists those appeals that were withdrawn by the appellant or dismissed because of State concurrence or settlement, and lists pending appeals cases. Secretarial decision documents and information contained in the record for pending appeals are located at: <http://www.ogc.doc.gov/czma.htm>.

General information on CZMA federal consistency is located at:
http://coastalmanagement.noaa.gov/czm/federal_consistency.html

CZMA Secretarial appeals and related information should be mailed to:

Office of the Assistant General Counsel for
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Silver Spring, Maryland 20910
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For CZMA Federal Consistency questions please contact either:

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LIST 1 - CZMA Secretarial Appeal Decisions Issued as of July 30, 2004				
Appellant, Project & Authorizing Federal Agency	State	Appeal Filed	Decision Date	Disposition
1. Exxon (SYU), Development & Production Plan, MMS	CA	7/22/83	2/18/84	Issued partial findings; deferred several findings required for override pending additional information
2. Ford S. Worthy, Jr., Commercial marina, Corps § 10	NC	8/5/83	5/9/84	Did Not Override State Objection Effects outweigh national interest
3. Union Oil Company of California, Exploration Plan, MMS	CA	12/12/83	11/9/84	Overrode State's Objection National interest outweigh effects
4. Exxon (SRU) (Santa Rosa), Exploration Plan, MMS	CA	3/9/84	11/14/84	Did Not Override State Objection Available alternative to drill outside Thresher Shark season
5. Southern Pacific Transportation Co., R.R. Bridge/wetland fill, Corps 404	CA	10/23/84	9/24/85	Overrode State's Objection National interest outweigh effects
6. Gulf Oil Corporation, Exploration Plan, MMS	CA	3/13/85	12/23/85	Overrode State's Objection National interest outweigh effects
7. Long Island Lighting Company, Wetland fill for Nuclear Plant, Corps	NY	11/19/86	2/26/88	Overrode State's Objection National interest outweigh effects
8. John K. DeLyser, Dock & Boathouse, Corps § 10	NY	1/6/87	2/26/88	Did Not Override State Objection Not further CZMA objectives
9. Korea Drilling Company, Ltd., Exploration Plan, MMS & NPDES, EPA	CA	12/15/86	1/19/89	Overrode State's Objection National interest outweigh effects
10. John Bianchi, Restaurant pier, Corps § 10	NY	9/5/85	1/25/89	Did Not Override State Objection Alternative available
11. Texaco, Inc., Exploration Plan, MMS & NPDES, EPA	CA	3/23/88	5/10/89	Overrode State's Objection National interest outweigh effects
12. Exxon Service Station, Wetland fill for gas station, Corps 404	NJ	1/7/87	6/14/89	Did Not Override State Objection Effects outweigh national interest
13. Amoco Production Company, Exploration Plan, MMS	AK	4/3/89	7/20/90	Overrode State's Objection National interest outweigh effects
14. Michael P. Galgano, Wetland fill for bulkhead, Corps 404	NY	7/14/88	10/29/90	Did Not Override State Objection Effects outweigh national interest
15. Chevron U.S.A., Inc., Exploration Plan, MMS & NPDES, EPA	CA	7/5/88	10/29/90	Did Not Override State Objection Alternative available re: air impact

LIST 1 - CZMA Secretarial Appeal Decisions Issued as of July 30, 2004				
Appellant, Project & Authorizing Federal Agency	State	Appeal Filed	Decision Date	Disposition
16. Shickrey Anton, Wetland fill, Corps 404	SC	10/2/89	5/21/91	Did Not Override State Objection Effects outweigh national interest
17. Sucesión Alberto Bachman, Swimmer's barrier, Corps 404	PR	3/18/88	10/10/91	Did Not Override State Objection Alternative available
18. José Pérez-Villamil, 125 ft pier, Corps § 10	PR	8/16/89	11/20/91	Did Not Override State Objection Effects outweigh national interest
19. Asociación de Propietarios de Los Indios, Houses/bulkheads, Corps	PR	9/26/88	2/19/92	Did Not Override State Objection Not further CZMA objectives
20. Davis Heniford, Wetland fill/grocery store, Corps 404	SC	9/24/90	5/21/92	Did Not Override State Objection Effects outweigh national interest Available alternative
21. Yeamans Hall Club, Wetland fill/dam & pond, Corps 404	SC	9/25/90	8/1/92	Did Not Override State Objection Alternative available
22. Roger W. Fuller, Dredge & fill to increase lot, Corps 404	NC	12/7/89	10/2/92	Did Not Override State Objection Effects outweigh national interest
23. Claire Pappas, Restaurant deck, Corps § 10	NY	3/13/90	10/26/92	Did Not Override State Objection Alternative available
24. A. Elwood Chestnut, Wetland fill for livestock, Corps 404	SC	8/14/89	11/4/92	Did Not Override State Objection Effects outweigh national interest Alternative available
25. Robert E. Harris, 75 ft dock/18 boat slips, Corps § 10	NY	10/26/90	12/2/92	Did Not Override State Objection Effects outweigh national interest Alternative available
26. Henry Crosby, Wetland fill for pond, Corps 404	SC	10/17/89	12/29/92	Did Not Override State Objection Effects outweigh national interest
27. Mobil Exploration & Producing U.S. Inc., (Pulley Ridge), Exploration Plan, MMS	FL	1/11/89	1/7/93	Did Not Override State Objection Effects outweigh national interest
28. Union Exploration Partners, Ltd. (Unocal Pulley Ridge), Exploration Plan, MMS	FL	12/21/88	1/7/93	Did Not Override State Objection Effects outweigh national interest
29. Chevron (Destin Dome-Exploration), Exploration Plan, MMS	FL	3/27/91	1/8/93	Overrode State's Objection National interest outweigh effects
30. Jorge L. Guerrero-Calderon, Pier, Corps § 10	PR	3/17/89	3/5/93	Did Not Override State Objection Effects outweigh national interest

LIST 1 - CZMA Secretarial Appeal Decisions Issued as of July 30, 2004				
Appellant, Project & Authorizing Federal Agency	State	Appeal Filed	Decision Date	Disposition
31. Carlos A. Cruz Colón, Pier, Corps § 10	PR	8/26/91	9/27/93	Did Not Override State Objection Alternative available
32. Virginia Electric and Power Company (Lake Gaston), water pipeline, FERC	NC	10/3/91	5/19/94	Overrode State's Objection National interest outweigh effects No alternative available
33. *Mobil Oil Exploration & Producing Southeast, Inc. (Mobil Manteo), NPDES/drilling discharge, EPA	NC	7/31/90	9/2/94	Did Not Override State Objection Inadequate information
34. *Mobil Oil Exploration & Producing Southeast, Inc. (Mobil Manteo), Exploration Plan, MMS	NC	12/3/90	9/2/94	Did Not Override State Objection Inadequate information
* Mobil Oil Exploration & Producing Southeast, Inc. (Mobil Manteo) (Continuation of 33 and 34)	NC		12/8/99	Did Not Override State Objection (declined to reopen record)
35. Olga Vélez Lugo, Dock/boat ramp, Corps § 10	PR	7/9/92	9/9/94	Did Not Override State Objection Effects outweigh national interest
36. Mobil Exploration & Producing U.S. Inc. (Mobil Pensacola), Exploration Plan, MMS	FL	4/29/92	6/20/95	Overrode State's Objection National interest outweigh effects
37. Vieques Marine Laboratories, Aquaculture, Corps § 10	PR	4/29/94	5/28/96	Did Not Override State Objection Effects outweigh national interest
38. Jessie W. Taylor, Wetland fill/mini storage, Corps 404	SC	4/10/96	12/30/97	Overrode State's Objection National interest outweigh effects
Jessie W. Taylor, (Re-issued with changes)	SC		12/28/98	Overrode State's Objection National interest outweigh effects
39. Millennium Pipeline Company natural gas pipeline, Corps & FERC	NY	6/7/02	12/12/03	Did not Override State Objection Reasonable alternative available
40. Islander East Pipeline Company, LLC., natural gas pipeline, Corps & FERC	CT	11/14/02	5/5/04	Overrode State's Objection National interest outweighs effects

LIST 2 - CZMA Secretarial Appeal Decisions on OCS Oil and Gas Activities – July 30, 2004

There have been 14 decisions issued by the Secretary for OCS oil and gas Exploration Plans (EPs) and Development and Production Plans (DPPs) and OCS National Pollutant Discharge Elimination System permits (NPDES). Of the 14 Decisions there have been:

7 decisions to override the State's objection, and
7 decisions upholding the State's objection.

These decisions, taken from the above table, are listed below:

<u>Appellant</u>	<u>EP, DPP, NPDES</u>	<u>State</u>	<u>Secretarial Decision</u>	
Exxon (SYU)	DPP	California	Partial Decision for State	(1984)
Union Oil	EP	California	Overrode State	(1984)
Exxon (SRU)	EP	California	Did Not Override State	(1984)
Gulf Oil	EP	California	Overrode State	(1985)
Korea Drilling Co.	EP/NPDES	California	Overrode State	(1989)
Texaco	EP/NPDES	California	Overrode State	(1989)
Amoco	EP	Alaska	Overrode State	(1990)
Chevron	EP/NPDES	California	Did Not Override State	(1990)
Mobil (Pulley Ridge)	EP	Florida	Did Not Override State	(1993)
Union Oil (Pulley Ridge)	EP	Florida	Did Not Override State	(1993)
Chevron (Destin Dome)	EP	Florida	Overrode State	(1993)
Mobil (2 cases) (Manteo)	EP/NPDES	North Carolina	Did Not Override State	(1994)
Mobil (Pensacola)	EP	Florida	Overrode State	(1995)
Mobil (Manteo)	EP	North Carolina	Did Not Override State	(1999)
(not a new case - continuation of 1994 Mobil Manteo)			(declined to reopen record)	

LIST 3 - CZMA Secretarial Appeals Dismissed or State Objections Overridden on Procedural Grounds as of July 30, 2004

(These decisions are issued by NOAA pursuant to authority delegated by the Secretary of Commerce. Procedural grounds for dismissal include: (1) appellant's failure to submit notice of appeal or brief within required period; (2) appellant's failure to pay application and processing fees; (3) appellant's failure to address whether the proposed activity is consistent with the CZMA or necessary in the interest of national security; (4) denial of the license, permit, or assistance by the federal permitting agency; and/or (5) State's or Secretary's lack of jurisdiction. Procedural grounds to override State objection include: (1) State's failure to file a timely objection; and/or (2) State's failure to base its objection on enforceable policies approved by NOAA.)

Appellant	State	Appeal Filed	Dismissal Date	Disposition
1. Daspit	MS		1988	Failure to file brief
2. Int'l Paper	SC	2/2/89	7/17/90	Objection was not timely
3. Gregorie Brothers	SC	8/5/91	12/12/91	Non payment of fees
4. Eugene J. Dean	MA		1/24/92	Objection was not timely
5. Jesse Floyd	SC	1/7/93	6/10/93	Non payment of fees
6. ERA	PR	5/13/92	11/29/94	Non payment of fees
7. D'Olive Joint Venture	AL	9/22/94	1/24/95	Non payment of fees
8. G. Martin Kuffiskie	AL	12/16/96	3/26/97	Non payment of fees
9. Joseph M. Mattone	NY	3/2/94	6/19/97	Appellant failed to file brief
10. Rick Bellew	AL	11/17/97	7/23/99	Appellant failed to address criteria
11. Ricardo Ramirez	PR	5/6/99	7/20/00	Appellant failed to address criteria
12. Cruz Colon	PR	2/7/00	7/11/00	Objection was not timely
13. Filiberto S. Montalvo Durand	PR	2/17/00	10/25/00	Non payment of fees
14. Jade Venture Group	MI	12/7/00	11/15/01	Secretary lacked jurisdiction to review
15. Collier Resources Company	FL	4/3/00	4/17/02	State lacked jurisdiction to object
16. Walter Taylor	MI	11/11/02	1/3/03	Non payment of fees
17. Torres-Martinez	PR	4/15/99	3/26/03	Permit application terminated; enforcement action by the Corps
18. Keegan	PR	10/26/99	12/5/03	Appellant died; no viable permit application following his death
19. Barnes Nursery, Inc.	OH	7/10/01	12/23/03	Appellant failed to address criteria

LIST 4 - CZMA Secretarial Appeals Withdrawn, Settled, or Dismissed as of July 30, 2004				
Appellant	State	Appeal Filed	Dismissal Date	Disposition
1. Carlisi & Herman	NY		1987	Withdrawn by appellant
2. Westvavco	SC		1987	Parties resolved
3. City of Ponce	PR		1987	Withdrawn by appellant
4. Paul King	NJ		1987	Withdrawn by appellant
5. Tip Top Assoc.	SC		1988	Parties resolved
6. Zanetti	SC		1988	Parties resolved
7. Cabo Rojo	PR		1988	Parties resolved
8. Beltran	PR		1988	Parties resolved
9. Northeastern Industrial Park	NY		1988	Withdrawn by appellant
10. Benson	AK		1988	Withdrawn by appellant
11. Davis A. McNeill			1988	Parties resolved
12. Bank of Ponce	PR		1989	Parties resolved
13. Telecino, Inc.	PR		1989	Withdrawn by appellant
14. Genstar	NJ		1989	Withdrawn by appellant
15. Gulf of Cumberland Farms	CT		1989	Withdrawn by appellant
16. NY City Prison	NY		1989	Parties resolved
17. Puerto Rico Houseboat	PR		1990	Withdrawn by appellant
18. Martin	SC		1990	Parties resolved
19. Allen	NC		1990	Parties resolved
20. Brown	SC		1990	Parties resolved
21. Texaco (Chukchi)			1990	Parties resolved
22. Kinston Smith			1990	Parties resolved
23. Bruce Dunlap and Betty Davis			1990	Parties resolved
24. Marvin Mann			1990	Parties resolved
25. Charles Le Breton			1990	Parties resolved
26. Joseph Rushton and Francis Codd	MD	10/11/91		Parties resolved
27. Victor Gonzales			1991	Parties resolved

LIST 4 - CZMA Secretarial Appeals Withdrawn, Settled, or Dismissed as of July 30, 2004				
Appellant	State	Appeal Filed	Dismissal Date	Disposition
28. Segarra-Pagan			1991	Parties resolved
29. Barbara Meekins			1991	Parties resolved
30. Jose Espada			1991	Parties resolved
31. Weyerhaeuser			1991	Parties resolved
32. South Essex Sewage District	MA		1992	Parties resolved
33. Niantic			1992	Parties resolved
34. Rivera			1992	Parties resolved
35. Zorzi			1992	Parties resolved
36. Seabrook			1992	Parties resolved
37. Staten Island Railway Corp.			1992	Parties resolved
38. Paul Thomas			1992	Parties resolved
39. Daro Land Holding Company			1992	Parties resolved
40. Municipality of Barceloneta			1992	Parties resolved
41. Conoco			1992	Parties resolved
42. William Towne	SC	12/9/91	7/19/92	Parties resolved
43. Texas Gulf	NC	9/3/92	11/9/92	Parties resolved
44. Staten Island Railway Corporation	NY	2/17/93	9/2/93	Parties resolved
45. William O. Bryans	SC		2/9/94	Parties resolved
46. Hawaii Dept. Of Accounting & General Services	HI	7/21/93	2/10/94	Parties resolved
47. Lipscomb	MD	8/17/94	6/12/95	Parties resolved
48. Texasgulf Inc.	NC	8/18/94	6/19/97	Withdrawn by appellant
49. Margaret C. Bryan	SC	10/4/96	8/13/97	Parties resolved
50. Port of Seattle	WA	7/17/98	5/3/01	Withdrawn by appellant
51. Niagara of Wisconsin Paper Corp.	WI	5/5/97	2/7/02	Withdrawn by appellant
52. City of San Diego	CA	5/8/02	12/17/02	Withdrawn by appellant

LIST 4 - CZMA Secretarial Appeals Withdrawn, Settled, or Dismissed as of July 30, 2004				
Appellant	State	Appeal Filed	Dismissal Date	Disposition
53. Chevron U.S.A. Destin Dome	FL	3/9/98	1/3/03	Dismissed pursuant to a settlement agreement for lawsuit related to the appeal.
54. Power Poles, Inc.	PR	11/13/03	12/12/03	Withdrawn by appellant
55. Villa Boheme	PR	10/27/97	5/27/04	Withdrawn by appellant
56. Luis F. Muniz	PR	10/6/01	5/27/04	Withdrawn by appellant

LIST 5 - CZMA Secretarial Appeals Pending as of July 30, 2004				
Appellant, Project & Authorizing Federal Agency	State	Appeal Filed	Decision or Dismissal Date	Disposition
1. Carlos Frontera Colley, improvements to beach house and pier, Corps	PR	4/6/99		
2. Fernando E. Otero Rodriguez, improvements to house and walkway	PR	4/21/99		
3. Pedro Vidal, improvements to house, docks, and boardwalks	PR	4/21/99		
4. Luz Torres DeRosa, improvements to house and boardwalk, Corps	PR	9/14/99		
5. Singleton Development Corporation, expansion of residential subdivision, Corps	MS	9/29/00		
6. U.S. Erie Island Development Company, dock and breakwater, Corps	OH	2/8/01		
7. Fenner, private recreational dock, Corps	NY	9/6/01		
8. Eugene A. Wimpee, fill of adjacent wetlands to provide access to an on-site residential structure	AL	8/5/03		
9. Villa Marine Yacht Harbour, Inc., marina expansion, Corps	PR	10/31/03		
10. Edwin Garcia, construction of private pier, Corps	PR	6/15/04		